

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF WISCONSIN

In re:

Case No. 16-20516-gmh

KEMEELAH N. FAIR and

MARKUS D. FAIR,

Debtors.

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STATE OF WISCONSIN,  
DEPARTMENT OF WORKFORCE DEVELOPMENT,

Plaintiff,

Adversary No. 16-02163-gmh

v.

MARKUS D. FAIR,

Defendant.

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**AMENDED COMPLAINT TO DETERMINE DISCHARGEABILITY OF DEBT**

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To the Honorable G. Michael Halfenger, Bankruptcy Judge:

1. This Court has jurisdiction over the subject matter of this complaint as a core proceeding pursuant to the provisions of 28 USC §§ 1334(a) & (b) and 157(b)(2)(I) and 11 USC §§ 523(a)(2) and 1328(a)(2).

2. This complaint seeking a determination of the dischargeability of a debt is an adversary proceeding within the meaning of Bankruptcy Rule 7001(6).

3. On January 25, 2016, the, defendant, filed a petition for relief under Chapter 13 of the Bankruptcy Code under Case No. 16-20516-gmh.

4. Pursuant to Bankruptcy Rule 4007(c), the deadline to file a complaint pursuant to § 523(c) of the Bankruptcy Code is May 9, 2016.

5. Plaintiff is an executive agency of the government of the State of Wisconsin charged with, among other things, the administration and enforcement of the Wisconsin Unemployment Insurance Law (Wis. Stat. Ch. 108).

Attorney Eric J. Volkmann  
Department of Workforce Development  
201 E Washington Ave, PO Box 8942  
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6. Plaintiff is a creditor of the debtor and has filed a proof of claim, which is docketed as Claim No. 10 in the Claims Register.

7. On or about December 20, 2010, defendant began a new benefit year for unemployment benefits with plaintiff.

8. In connection with defendant's unemployment benefit claim, he made false and fraudulent statements and/or misrepresentations to the plaintiff.

9. For example, defendant filed weekly unemployment insurance benefit claims for each of weeks 43 of 2011 (week ending October 22, 2011), through week 48 of 2011 (week ending November 26, 2011).

10. As part of each such weekly unemployment benefit claim, defendant certified that he had neither worked nor earned wages.

11. In fact, defendant had worked for, and earned wages from UW-Milwaukee in each of said weeks.

12. On or about August 31, 2015, defendant filed a claim for unemployment benefits with plaintiff.

13. In connection with defendant's unemployment benefit claim, he made false and fraudulent statements and/or misrepresentations to the plaintiff.

14. For example, defendant filed weekly unemployment insurance benefit claims for each of weeks 45 of 2015 (week ending November 7, 2015), through week 49 of 2015 (week ending December 5, 2015).

15. As part of each such weekly unemployment benefit claim, defendant certified that he had neither worked nor earned wages.

16. In fact, defendant had worked for, and earned wages from Coakley Brothers Co. in each of said weeks.

17. As a result of defendant's failure to have properly reported work and wages in connection with his unemployment insurance benefit claims, he was paid unemployment insurance benefits to which he was not legally entitled.

18. Defendant's failure to properly report work and wages was done knowingly and with the intent to cause the plaintiff to pay weekly unemployment insurance benefits to him, to which he knew or should have known he was not entitled.

19. In reliance on defendant's false statements, plaintiff erroneously determined him to be eligible for unemployment benefits, and erroneously paid to him unemployment benefits to which he was not entitled, in the total sum of \$2,589.00.

20. The un-appealed administrative determination that defendant was overpaid unemployment insurance benefits because of his failure to have properly reported work and wages in connection with his unemployment benefit claims is attached hereto as Exhibit A.

21. The un-appealed administrative determination that the unemployment insurance benefit overpayment paid to defendant occurred as a result of concealment, fraud and/or misrepresentation on his part is attached hereto as Exhibit B.

22. The plaintiff has recovered \$125.62 of the overpayment.

23. The debt owed by defendant to the plaintiff for the \$2,463.38 unpaid balance of erroneously paid unemployment benefits, plus the \$350.00 filing fee in this matter, for a total of \$2,813.38, is not dischargeable pursuant to 11 U.S.C. § 523(a)(2)(A).

WHEREFORE, plaintiff respectfully requests that the Court determine that the debt owed to plaintiff by defendant is not dischargeable under the Bankruptcy Code, render judgment in favor of plaintiff against defendant in the amount of \$2,463.38, plus the filing fee of \$350.00, and grant plaintiff such other and further relief as is just and proper.

Dated: Madison, Wisconsin  
August 2, 2016

STATE OF WISCONSIN,  
DEPARTMENT OF WORKFORCE DEVELOPMENT

/s/ Eric J. Volkmann

Eric J. Volkmann (State Bar Number 1066517)  
Christine L. Galinat (State Bar Number 1000693)  
Andrew J. Rubsam (State Bar Number 1079600)  
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SS # 0970

UI LO #: 14  
UI Acct. #:DUPLICATE  
DETERMINATION

MARKUS D FAIR  
1804 N 36TH ST  
MILWAUKEE WI 53208-1944

Issue Week:	43/11	Applicable
Week Ending:	10/22/11	Wisconsin Law: 108.02(26) AND 108.04(11)(B)

## FINDINGS AND DETERMINATION OF THE DEPUTY:

SECTION 108.04(11)(B) OF THE STATUTES STATES THAT NO BENEFITS ARE PAYABLE FOR A WEEK IN WHICH THE CLAIMANT CONCEALS ANY WAGES EARNED IN OR PAID OR PAYABLE FOR THAT WEEK.

THE CLAIMANT CONCEALED WORK AND WAGES WITH UW MILWAUKEE DURING THE WEEK(S) ENDING: 10/22/11. 10/29/11. 11/05/11. 11/12/11. 11/19/11. 11/26/11. HE CONCEALED THIS WORK AND WAGES ON HIS WEEKLY CERTIFICATIONS.

THE CLAIMANT WAS NOTIFIED THAT THE DEPARTMENT QUESTIONED HIS ELIGIBILITY. HE FAILED TO RESPOND TO OR DISPUTE THE INFORMATION AVAILABLE TO THE DEPARTMENT.

## EFFECT

NO BENEFITS ARE PAYABLE FOR THE ABOVE WEEK(S).

THIS DECISION RESULTS IN AN OVERPAYMENT OF \$ 1434.00 WHICH MUST BE REPAYED BY THE CLAIMANT.

SEND A CHECK OR MONEY ORDER, PAYABLE TO UNEMPLOYMENT INSURANCE, TO THE UNEMPLOYMENT INSURANCE DIVISION, P.O. BOX 7888, MADISON, WI 53707.

THE DEPARTMENT WILL WITHHOLD UNEMPLOYMENT BENEFITS PAYABLE FOR FUTURE WEEKS TO OFFSET OVERPAYMENTS OF UNEMPLOYMENT INSURANCE AND OTHER SPECIAL PROGRAM BENEFITS THAT MUST BE REPAYED TO THIS STATE, TO ANOTHER STATE, OR TO THE FEDERAL GOVERNMENT.

RECOVERY OF THE OVERPAYMENT IS NOT WAIVED UNDER S. 108.22(8)(C) BECAUSE THE ERRONEOUS PAYMENT(S) WERE NOT THE RESULT OF DEPARTMENTAL ERROR AND/OR THEY WERE THE RESULT OF THE CLAIMANT'S FAILURE TO PROVIDE CORRECT AND COMPLETE INFORMATION TO THE DEPARTMENT.

THIS DETERMINATION DOES NOT DISPOSE OF THE ISSUE INVOLVING THE CONCEALMENT

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**THIS INFORMATION IS IMPORTANT TO BOTH PARTIES AND SHOULD BE READ IMMEDIATELY**

This determination resolves an unemployment eligibility issue. If you have questions about this determination or problems filing weekly claims, contact a Claims Specialist at:

Claimant	Employer	Madison Benefit Center	Milwaukee Benefit Center
414-438-7713	414-438-7705	P.O. Box 8978	P.O. Box 909999
608-232-0824	608-232-0633	Madison, WI 53708	Milwaukee, WI 53209
See <a href="http://dwd.wisconsin.gov/uiben/services.htm">http://dwd.wisconsin.gov/uiben/services.htm</a> for hours of operation.			

**If you intend to appeal, you must file an appeal by the date stated on the front side of this determination regardless of whether you have been unable to reach the department by telephone or mail.**

**If you are the employer** and benefits are allowed by this determination, benefits may be charged to your individual UI account unless you receive specific notice that benefits are to be charged to the fund's balancing account, which does **not** result in an individual employer's account being charged. If a subsequent decision finds the claimant ineligible, benefits paid may be credited to the employer's UI account. **If you have questions about employer charges or want to notify the department of an additional issue(s), contact a Claims Specialist (see above).**

**HOW TO FILE AN APPEAL**

**IF YOU DISAGREE WITH THIS DETERMINATION, YOU HAVE THE RIGHT TO FILE AN APPEAL.** An appeal is a request for a hearing before an Administrative Law Judge. You should submit a separate request for each determination you want to appeal.

- \* An appeal must be in writing and state that it is an appeal to the determination and should:
- \* Indicate whether it is a claimant or employer appeal
- \* Include the claimant's name and Social Security number
- \* Identify the determination by its 9-digit ID number located in the upper left-hand corner **and**, unless the appeal is filed online, include a copy of the determination
- \* Identify the name of the employer **and** where the work was performed, if different from the address on the determination
- \* Provide your attorney or agent's name and address (if you are represented), and include dates when you, your attorney, agent, or witness(es) are not available for a hearing as postponements cannot always be granted
- \* Indicate any special needs, i.e., accommodations you may need as a result of a disability or a hearing office-supplied interpreter (language or sign)
- \* Be signed and dated by you, your agent or attorney, unless filed online

To be timely, your appeal **must** be received or postmarked by the last appeal date shown on the front of this determination. An appeal by **FAX or Internet must be received by midnight (central time) on the last appeal date.** A claimant in another state may file an appeal at the nearest public employment office. An appeal filed online will be received and processed sooner than an appeal filed by mail.

Any appeal that is **received or postmarked after the deadline** must include the reason(s) why you are filing a late appeal. The Administrative Law Judge, or ALJ, will determine whether a hearing will be held or will dismiss the appeal without a hearing and the initial determination will remain the final disposition of the case.

**WHERE TO FILE AN APPEAL**

**ONLINE:** <http://dwd.wisconsin.gov/uibola/onlineappeal.htm>

**MAIL:** MILWAUKEE HEARING OFFICE  
819 N. 6TH ST., ROOM 382  
MILWAUKEE, WI 53203

**FAX:** (414) 227-4264

**IMMEDIATELY START PREPARING FOR A HEARING SINCE HEARING NOTICES MAY BE MAILED ONLY 6 DAYS PRIOR TO THE SCHEDULED HEARING.** Collect documents and evidence and identify witness(es) that you need for the hearing. If you are going to be represented, contact the hearing office with the name and address of the representative. The department does not provide attorneys or agents to represent parties at hearings.

When an appeal is filed, read the online booklet, Attending an Unemployment Insurance Hearing, available for viewing and printing at <http://dwd.wisconsin.gov/dwd/publications/ui/hearing.htm>. **Read all information carefully.**

**If you are the claimant, you must continue to file weekly claims while this determination is under appeal.** If this determination denies benefits and is reversed as a result of the appeal, you will be eligible for benefits for the week(s) at issue only if you filed a claim for such week(s). If you stopped claiming and wish to reopen your claim, please refer to the Handbook for Claimants online at <http://dwd.wisconsin.gov/uiben/handbook>. If benefits are allowed by this determination and you are otherwise eligible, benefit payments may continue while the appeal is pending. If a subsequent decision finds you ineligible, you may be required to repay benefits and the employer's UI account may be credited.



SS #

0970

UI LO #: 14

UI Acct. #:

**DUPLICATE  
DETERMINATION**

MARKUS D FAIR  
1804 N 36TH ST  
MILWAUKEE WI 53208-1944

Issue Week:	43/11	Applicable
Week Ending:	10/22/11	Wisconsin Law: 108.02(26) AND 108.04(11)(B)

## FINDINGS AND DETERMINATION OF THE DEPUTY:

OF WAGES.

THE RESOLUTION OF THIS CONCEALMENT ISSUE WILL BE SET FORTH IN  
ANOTHER DECISION ISSUED ON THIS SAME DATE OR IN A LATER DECISION.

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0970

UI LO #: 14

UI Acct. #:

DUPLICATE  
DETERMINATION

MARKUS D FAIR  
1804 N 36TH ST  
MILWAUKEE WI 53208-1944

Issue Week:	44/15	Applicable
Week Ending:	10/31/15	Wisconsin Law: 108.02(26), 108.04(11)(B) AND 108.05(3)

## FINDINGS AND DETERMINATION OF THE DEPUTY:

SECTION 108.04(11)(B) OF THE STATUTES STATES THAT NO BENEFITS ARE PAYABLE FOR A WEEK IN WHICH THE CLAIMANT CONCEALS ANY HOURS WORKED AND/OR WAGES EARNED IN OR PAID OR PAYABLE FOR THAT WEEK.

THE CLAIMANT WORKED AND EARNED WAGES FROM COAKLEY BROTHERS CO DURING THE WEEK(S) ENDING: 10/31/15. 11/07/15. 11/14/15. 11/21/15. 11/28/15. 12/05/15. HE CONCEALED THIS WORK AND WAGES ON HIS WEEKLY CERTIFICATIONS.

THE CLAIMANT WAS NOTIFIED THAT THE DEPARTMENT QUESTIONED HIS ELIGIBILITY. HE FAILED TO RESPOND TO OR DISPUTE THE INFORMATION AVAILABLE TO THE DEPARTMENT.

THE CLAIMANT HAS BEEN NOTIFIED OF PRIOR WAGE AND HOUR CONCEALMENT IN THE PAST, PUTTING HIM ON NOTICE THAT HE IS HELD TO HIGHER LEVEL OF ACCOUNTABILITY AND EXPECTATION TO ANSWER WEEKLY CLAIM CERTIFICATION QUESTIONS ACCURATELY AND HONESTLY. THE QUESTION IS SIMPLE AND CLEAR AND IT HAS NOT BEEN ESTABLISHED THAT THE CLAIMANT'S FAILURE WAS OUTSIDE OF HIS CONTROL.

## EFFECT

NO BENEFITS ARE PAYABLE FOR THE ABOVE WEEK(S).

THIS DECISION RESULTS IN AN OVERPAYMENT OF \$ 1155.00 WHICH MUST BE REPAYED BY THE CLAIMANT.

SEND A CHECK OR MONEY ORDER, PAYABLE TO UNEMPLOYMENT INSURANCE, TO THE UNEMPLOYMENT INSURANCE DIVISION, P.O. BOX 7888, MADISON, WI 53707.

THE DEPARTMENT WILL WITHHOLD UNEMPLOYMENT BENEFITS PAYABLE FOR FUTURE WEEKS TO OFFSET OVERPAYMENTS OF UNEMPLOYMENT INSURANCE AND OTHER SPECIAL PROGRAM BENEFITS THAT MUST BE REPAYED TO THIS STATE, TO ANOTHER STATE, OR TO THE FEDERAL GOVERNMENT.

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0970

UI LO #: 14

UI Acct. #:

DUPLICATE  
DETERMINATION

MARKUS D FAIR  
1804 N 36TH ST  
MILWAUKEE WI 53208-1944

Issue Week:	44/15	Applicable
Week Ending:	10/31/15	Wisconsin Law: 108.02(26), 108.04(11)(B) AND 108.05(3)

## FINDINGS AND DETERMINATION OF THE DEPUTY:

THIS DECISION RESULTS IN AN OVERPAYMENT OF \$1,386.00, OF WHICH \$231.00 IS INCLUDED IN THE OVERPAYMENT AMOUNT SET FORTH BY ANOTHER DECISION DATED 11/04/15.

THE CLAIMANT IS REQUIRED TO REPAY \$ 1155.00 AS A RESULT OF THIS DECISION. REPAYMENT INSTRUCTIONS WILL BE MAILED TO THE CLAIMANT AFTER THIS DECISION IS FINAL.

THE DEPARTMENT WILL WITHHOLD BENEFITS DUE FOR FUTURE WEEKS OF UNEMPLOYMENT TO OFFSET OVERPAYMENTS OF UI AND OTHER SPECIAL BENEFIT PROGRAMS FROM THIS STATE, FROM ANOTHER STATE, OR FROM THE FEDERAL GOVERNMENT.

CONTACT THE UNEMPLOYMENT INSURANCE DIVISION, COLLECTIONS UNIT, PO BOX 7888, MADISON WI 53707, TO ESTABLISH AN AGREEMENT TO REPAY THE OVERPAYMENT.

RECOVERY OF THE OVERPAYMENT IS NOT WAIVED UNDER S. 108.22(8)(C) BECAUSE THE ERRONEOUS PAYMENT(S) WERE NOT THE RESULT OF DEPARTMENTAL ERROR AND/OR THEY WERE THE RESULT OF THE CLAIMANT'S FAILURE TO PROVIDE CORRECT AND COMPLETE INFORMATION TO THE DEPARTMENT.

AS A RESULT OF CONCEALING INFORMATION, THIS DETERMINATION INCLUDES A PENALTY OF 40% OF THE OVERPAYMENT IN THE AMOUNT OF \$462.00. THIS PENALTY DOES NOT INCLUDE ANY OTHER BENEFIT REDUCTIONS THAT MAY RESULT FROM THIS CONCEALMENT, FOR WHICH A SEPARATE DETERMINATION WILL BE MADE.

SEND A CHECK OR MONEY ORDER TO THE SAME ADDRESS LISTED FOR THE OVERPAYMENT.

DEPUTY  ADJUDICATOR 1405	DATE MAILED  06/03/16	DECISION FINAL UNLESS A WRITTEN APPEAL IS RECEIVED OR POSTMARKED BY Page 9 of 12  06/17/16
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UI LO #: 14  
UI Acct. #:DUPLICATE  
DETERMINATION

MARKUS D FAIR  
1804 N 36TH ST  
MILWAUKEE WI 53208-1944

Issue Week:	43/11	Applicable
Week Ending:	10/22/11	Wisconsin Law: 108.04(11)

## FINDINGS AND DETERMINATION OF THE DEPUTY:

THE CLAIMANT INDICATED ON THE WEEKLY CERTIFICATION HE DID NOT WORK. THE CLAIMANT PERFORMED WORK AND EARNED WAGES DURING THE WEEK(S) ENDING 10/22/11-11/26/11. THE CLAIMANT WORKED FOR UW MILWAUKEE.

THE DEPARTMENT'S RECORD AND/OR CLAIMANT'S STATEMENT SHOWS THE CLAIMANT HAD THE OPTION TO CHANGE HIS ANSWER(S), AND VERIFIED THE ANSWER(S) GIVEN WAS/WERE CORRECT. THE CLAIM CONFIRMATION AND INSTRUCTIONS WERE ALSO SENT. IN ADDITION, HE PREVIOUSLY REPORTED WORK PERFORMED AND WAGES EARNED ON THE WEEKLY CERTIFICATION(S). IN ADDITION, A PRIOR CONCEALMENT DETERMINATION AND/OR LETTER OF DIRECTION HAD BEEN SENT.

THE CLAIMANT WAS NOTIFIED THAT THE DEPARTMENT QUESTIONED HIS FAILURE TO CORRECTLY REPORT ALL INFORMATION. HE FAILED TO RESPOND TO OR DISPUTE THE INFORMATION AVAILABLE TO THE DEPARTMENT.

THE CLAIMANT CONCEALED WORK PERFORMED AND WAGES EARNED AND/OR A MATERIAL FACT RELATING TO HIS ELIGIBILITY FOR BENEFITS.

## EFFECT

THE CLAIMANT SHALL FORFEIT \$1434.00 OF UNEMPLOYMENT COMPENSATION BENEFITS THAT BECOME PAYABLE DURING THE SIX YEAR PERIOD THAT ENDS 06/09/18.

\*\*\*\*\*  
THIS FORFEITURE (THE WITHHOLDING OF FUTURE PAYABLE BENEFITS) IS AN ADMINISTRATIVE PENALTY FOR INTENTIONALLY CONCEALING INFORMATION AFFECTING YOUR UNEMPLOYMENT ELIGIBILITY AND IS IN ADDITION TO ANY OVERPAYMENT CAUSED BY SUCH CONCEALMENT OF INFORMATION.  
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SS # 0970 UI Acct. #:DUPLICATE  
DETERMINATION

MARKUS D FAIR  
1804 N 36TH ST  
MILWAUKEE WI 53208-1944

Issue Week: 44/15	Applicable
Week Ending: 10/31/15	Wisconsin Law: 108.04(11)

## FINDINGS AND DETERMINATION OF THE DEPUTY:

THE CLAIMANT INDICATED ON THE WEEKLY CERTIFICATION HE DID NOT WORK. THE CLAIMANT PERFORMED WORK AND EARNED WAGES DURING THE WEEK(S) ENDING 10/31/15 THROUGH 12/05/15. THE CLAIMANT WORKED FOR COAKLEY BROTHERS CO.

THE DEPARTMENT'S RECORD AND/OR CLAIMANT'S STATEMENT SHOWS THE CLAIMANT HAD THE OPTION TO CHANGE HIS ANSWER(S), AND VERIFIED THE ANSWER(S) GIVEN WAS/WERE CORRECT. THE CLAIM CONFIRMATION AND INSTRUCTIONS WERE ALSO SENT. IN ADDITION, HE PREVIOUSLY REPORTED WORK PERFORMED AND WAGES EARNED ON THE WEEKLY CERTIFICATION(S). IN ADDITION, A PRIOR CONCEALMENT DETERMINATION AND/OR LETTER OF DIRECTION HAD BEEN SENT.

THE CLAIMANT WAS NOTIFIED THAT THE DEPARTMENT QUESTIONED HIS FAILURE TO CORRECTLY REPORT ALL INFORMATION. HE FAILED TO RESPOND TO OR DISPUTE THE INFORMATION AVAILABLE TO THE DEPARTMENT.

THE CLAIMANT CONCEALED WORK PERFORMED AND WAGES EARNED AND/OR A MATERIAL FACT RELATING TO HIS ELIGIBILITY FOR BENEFITS.

THE CLAIMANT HAS BEEN NOTIFIED OF PRIOR WAGE AND HOUR CONCEALMENT IN THE PAST, PUTTING HIM ON NOTICE THAT HE IS HELD TO HIGHER LEVEL OF ACCOUNTABILITY AND EXPECTATION TO ANSWER WEEKLY CLAIM CERTIFICATION QUESTIONS ACCURATELY AND HONESTLY. THE QUESTION IS SIMPLE AND CLEAR AND IT HAS NOT BEEN ESTABLISHED THAT THE CLAIMANT'S FAILURE WAS OUTSIDE OF HIS CONTROL.

## EFFECT

THE CLAIMANT'S BENEFIT AMOUNT SHALL HAVE A REDUCTION OF \$2772.00. THIS REDUCTION REMAINS IN EFFECT FOR BENEFITS AND WEEKS THAT BECOME PAYABLE DURING THE SIX-YEAR PERIOD THAT ENDS 05/28/22.

\*\*\*\*\* THIS BENEFIT REDUCTION OF FUTURE PAYABLE BENEFITS IS AN ADMINISTRATIVE PENALTY

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**DUPLICATE  
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MILWAUKEE WI 53208-1944

Issue Week:	44/15	Applicable
Week Ending:	10/31/15	Wisconsin Law: 108.04(11)

## FINDINGS AND DETERMINATION OF THE DEPUTY:

**FOR INTENTIONALLY CONCEALING INFORMATION AFFECTING YOUR UNEMPLOYMENT  
ELIGIBILITY AND IS IN ADDITION TO ANY OVERPAYMENT CAUSED BY SUCH  
CONCEALMENT OF INFORMATION.**

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DEPUTY  ADJUDICATOR 1405	DATE MAILED  06/03/16	DECISION FINAL UNLESS A WRITTEN APPEAL IS RECEIVED OR POSTMARKED BY: Page 12 of 12  06/17/16
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